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9 **BEFORE THE**
10 **CALIFORNIA BOARD OF ACCOUNTANCY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 JON STEPHEN WINTERBURN
1767 Market Street, #C
Redding, CA 96001

15 Certified Public Accountant Certificate No. CPA 49935

16 Respondent.

Case No. AC-2005-28

OAH No. 2005100336

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceeding that the following matters are true:

20 **PARTIES**

21 1. Carol Sigmann ("Complainant") is the Executive Officer of the California
22 Board of Accountancy. She brought this action solely in her official capacity and is represented
23 in this matter by Bill Lockyer, Attorney General of the State of California, by Geoffrey S. Allen,
24 Deputy Attorney General.

25 2. Jon Stephen Winterburn ("Respondent") is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about January 29, 1988, the Board issued Certified Public
28 Accountant Certificate Number CPA 49935 to Jon Stephen Winterburn ("Respondent").

1 Respondent's Certified Public Accountant ("CPA") certificate was renewed in an active status for
2 the period from March 1, 2002, through February 29, 2004. Respondent's CPA certificate was
3 expired and invalid during the period from March 1, 2004, through May 24, 2004, due to
4 Respondent's failure to pay the renewal fee required by Business and Professions Code section
5 5070.5 and failure to submit a declaration of compliance with continuing education requirements.
6 Effective May 25, 2004, Respondent's CPA certificate was renewed in an active status through
7 June 3, 2004, upon receipt of the renewal fee and declaration of compliance with continuing
8 education requirements. Effective June 4, 2004, Respondent's CPA certificate was placed on
9 hold and a temporary 30/150-day license was issued to Respondent pursuant to Family Code
10 section 17520. The hold on Respondent's CPA certificate was released pursuant to Family Code
11 section 17520 effective October 29, 2004, and was renewed in an active status through February
12 28, 2006. Respondent's CPA certificate is currently expired.

13 **JURISDICTION**

14 4. Accusation No. AC-2005-28 was filed before the California Board of
15 Accountancy (Board), Department of Consumer Affairs, and is currently pending against
16 Respondent. The Accusation and all other statutorily required documents were properly served
17 on Respondent on June 13, 2005. Respondent timely filed his Notice of Defense contesting the
18 Accusation. A copy of Accusation No. AC-2005-28 is attached as exhibit A and incorporated
19 herein by reference.

20 **ADVISEMENT AND WAIVERS**

21 5. Respondent has carefully read, and understands the charges and allegations
22 in Accusation No. AC-2005-28. Respondent has also carefully read, and understands the effects
23 of this Stipulated Settlement and Disciplinary Order.

24 6. Respondent is fully aware of his legal rights in this matter, including the
25 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
26 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
27 the right to present evidence and to testify on his own behalf; the right to the issuance of
28 subpoenas to compel the attendance of witnesses and the production of documents; the right to

reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2005-28.

9. Respondent agrees that his Certified Public Accountant Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate Number CPA 49935 issued to Respondent Jon Stephen Winterburn is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

2. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

3. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

4. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

5. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice investigation of the Respondent's professional practice. Such a practice investigation

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1 shall be conducted by representatives of the Board, provided notification of such review is
2 accomplished in a timely manner.

3 6. **Comply With Citations.** Respondent shall comply with all final orders
4 resulting from citations issued by the Board of Accountancy.

5 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
6 Respondent should leave California to reside or practice outside this state, Respondent must
7 notify the Board in writing of the dates of departure and return. Periods of non-California
8 residency or practice outside the state shall not apply to reduction of the probationary period, or
9 of any suspension. No obligation imposed herein, including requirements to file written reports,
10 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
11 affected by such periods of out-of-state residency or practice except at the written direction of the
12 Board.

13 8. **Violation of Probation.** If Respondent violates probation in any respect,
14 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
15 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
16 probation is filed against Respondent during probation, the Board shall have continuing
17 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
18 is final.

19 9. **Completion of Probation.** Upon successful completion of probation,
20 Respondent's license will be fully restored.

21 10. **Continuing Education Courses.** Respondent shall complete and provide
22 proper documentation of twenty-six (26) hours of professional education courses. Respondent
23 shall complete the professional education courses as specified by the Board or its designee at the
24 time of respondent's first probation appearance. The professional education courses shall be
25 completed within a period of time designated and specified in writing by the Board or its
26 designee, which time frame shall be incorporated as a condition of this probation. This shall be
27 as a part of the continuing education requirements for an active license status.

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12. **Cost Reimbursement.** Respondent shall reimburse the Board its costs of investigation and prosecution in the amount of Eight Thousand, Eight Hundred, Eighty-Eight Dollars and Ninety-Five Cents (\$8,888.95), which sum shall be paid on a schedule approved by the Board. In no event shall the final payment be due less than six (6) months prior to the end of probation.

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

ION STEPHEN WINTERBURN
Respondent

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

BILL LOCKYER, Attorney General
of the State of California

GEOFFREY S. ALLEN
Deputy Attorney General
Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JON STEPHEN WINTERBURN
1767 Market Street, #C
Redding, CA 96001

Certified Public Accountant Certificate No. CPA 49935

Respondent.

Case No. AC-2005-28

OAH No. 2005100336

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 23, 2006.

It is so ORDERED May 24, 2006.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 ARTHUR D. TAGGART, State Bar No. 83047
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Case No. AC-2005-28

13 JON STEPHEN WINTERBURN
1767 Market Street, #C
14 Redding, CA 96001

A C C U S A T I O N

15 Certified Public Accountant Certificate No. CPA 49935

16 Respondent.

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18 Carol Sigmann ("Complainant"), for cause for discipline, alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the California Board of Accountancy (hereinafter "Board"), Department of
22 Consumer Affairs.

23 2. On or about January 29, 1988, the Board issued Certified Public
24 Accountant Certificate (hereinafter "certificate") Number CPA 49935 to Jon Stephen Winterburn
25 ("Respondent"). Respondent's certificate was renewed in an active status for the period from
26 March 1, 2002, through February 29, 2004. Respondent's certificate was expired and invalid
27 during the period from March 1, 2004, through May 24, 2004, due to Respondent's failure to pay
28 the renewal fee required by Business and Professions Code section 5070.5 and failure to submit a

1 declaration of compliance with continuing education requirements. Effective May 25, 2004,
2 Respondent's certificate was renewed in an active status through June 3, 2004, upon receipt of
3 the renewal fee and declaration of compliance with continuing education requirements. Effective
4 June 4, 2004, Respondent's certificate was placed on hold and a temporary 30/150-day license
5 was issued to Respondent pursuant to Family Code section 17520. The hold on Respondent's
6 certificate was released pursuant to Family Code section 17520 effective October 29, 2004, and
7 has been renewed in an active status through February 28, 2006.

8 STATUTORY PROVISIONS

9 3. Business and Professions Code (hereinafter "Code") section 5109 states:

10 The expiration, cancellation, forfeiture, or suspension of a license,
11 practice, privilege, or other authority to practice public accountancy by operation
12 of law or by order or decision of the board or a court of law, or the voluntary
13 surrender of a license by a licensee shall not deprive the board of jurisdiction to
14 commence or proceed with any investigation of or action or disciplinary
15 proceeding against the licensee, or to render a decision suspending or revoking the
16 license.

14 4. Code section 5100 states, in pertinent part:

15 After notice and hearing the board may revoke, suspend, or refuse to
16 renew any permit or certificate granted under Article 4 (commencing with Section
17 5070) and Article 5 (commencing with Section 5080), or may censure the holder
18 of that permit or certificate for unprofessional conduct that includes, but is not
19 limited to, one or any combination of the following causes:

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19 (c) Dishonesty, fraud, gross negligence, or repeated negligent acts
20 committed in the same or different engagements, for the same or different clients,
21 or any combination of engagements or clients, each resulting in a violation of
22 applicable professional standards that indicate a lack of competency in the
23 practice of public accountancy or in the performance of the bookkeeping
24 operations described in Section 5052 . . .

23 COST RECOVERY

24 5. Code section 5107 states, in pertinent part:

25 (a) The executive officer of the board may request the administrative law
26 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
27 holder of a permit or certificate found to have committed a violation or violations
28 of this chapter to pay to the board all reasonable costs of investigation and
prosecution of the case, including, but not limited to, attorney's fees . . .

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1 CAUSE FOR DISCIPLINE

2 **(Repeated Acts of Negligence)**

3 6. Respondent is subject to disciplinary action under Code section 5100(c) in
4 that in and between October 2003, and November 2003, he performed repeated acts of
5 negligence in the preparation of the original and proposed amended 2002 federal and state
6 income tax returns for Mrs. P., as follows:

7 a. Respondent filed Mrs. P.'s original 2002 federal and state income tax
8 returns electronically without Mrs. P.'s written authorization.

9 b. Respondent prepared Mr. P.'s original 2002 federal and state income tax
10 returns using the "married filing separate" filing status and included itemized deductions on
11 Schedule A. However, Respondent prepared Mrs. P.'s original tax returns using the "single"
12 filing status and the standard deduction.

13 c. Respondent prepared Mr. and Mrs. P.'s proposed amended 2002 federal
14 and state income tax returns using the "married filing separate" filing status. Respondent failed
15 to allocate losses and deductions from community property assets, known to Respondent, to each
16 taxpayer, including the loss on rental property and itemized deductions for mortgage interest,
17 state income taxes, and property taxes.

18 d. Respondent failed to properly allocate the estimated tax payments between
19 Mr. and Mrs. P. on their proposed amended 2002 federal and state tax returns.

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1 PRAYER

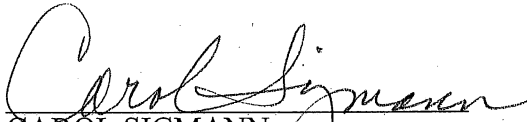
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

4 1. Revoking, suspending, or otherwise imposing discipline on Certified
5 Public Accountant Certificate Number CPA 49935, issued to Jon Stephen Winterburn;

6 2. Ordering Jon Stephen Winterburn to pay the California Board of
7 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to
8 Business and Professions Code section 5107;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: June 3, 2005

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13 CAROL SIGMANN
14 Executive Officer
15 California Board of Accountancy
16 Department of Consumer Affairs
17 State of California
18 Complainant
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